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ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
April 17, 1974

FILE NO. S-735

ELECTIONS:

**Special Elections Filling
Vacancy in Office of the
State's Attorney**

Peter J. Woods
Special State's Attorney
Ogle County
Oregon, Illinois 61061

Dear Mr. Woods:

This responds to your request dated March 22, 1974, for an opinion regarding the necessity for a special primary to nominate candidates to fill a vacancy in the office of the State's Attorney in Ogle County, arising from the death of Richard L. Caldwell. Your specific question is that since there are two years left in the term of Richard L. Caldwell and the next general election is in November 1974, should there be a special primary held before the general election.

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Section 25-11 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 25-11) provides in pertinent part:

"* * * [W]hen a vacancy shall occur in the office of Sheriff, Coroner, Recorder of Deeds, County Treasurer, State's Attorney, County Clerk, or other county or precinct officer not otherwise provided for by law, at any time before the expiration of the term of such vacant office, such vacancy shall be filled by appointment, by the County Board of the county in which such vacancy exists, until the next general, county or precinct election when a successor shall be elected for the unexpired term or a full term as the case may require."

Under this provision it is necessary that an election be held to fill the vacancy. Such an election would be a special election as defined in section 1-3 of the Election Code. Ill. Rev. Stat. 1973, ch. 46, par. 1-3.

Section 7-61 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-61) provides in pertinent part as follows:

"§7-61. Whenever a special election is necessary the provisions of this Article are applicable to the nomination of candidates to be voted for at such special election.

In cases where a primary election is required the officer or board or commission whose duty it is under the provisions of this Act relating to general elections to call an election, shall fix a date for the primary for the nomination of candidates to be voted for at such special election. Notice of such primary shall be given at least 15 days prior to the maximum time provided for the filing of petitions for such a primary as provided in Section 7-12. * * * "

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Section 7-5 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-5) provides that established political parties nominate candidates for the office of State's Attorney by means of a primary. Said section 7-5 reads, in part, as follows:

"A primary shall be held on the third Tuesday in March in every year in which officers are to be voted for on the first Tuesday after the first Monday in November of such year, for the nomination of candidates for such offices as are to be voted for at such November election."

Therefore, since established political parties nominate candidates for the office of State's Attorney by means of a primary, it is my opinion that a special primary must be held before November 1974 to allow established political parties to nominate candidates for the unexpired term of the State's Attorney.

You may be interested in examining certain statutory provisions which provide the timetable under which such special primary must be held. Section 7-61, supra, provides notice of such a primary must be given 15 days prior to the maximum time provided for the filing of petitions for a primary as

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provided in section 7-12 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-12), which is 99 days. It is therefore necessary to give a notice of at least 114 days for the special primary election. Section 7-5 of the Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-5) requires that the primary "shall be held seven weeks preceding the date of the general * * * election * * *".

Very truly yours,

A T T O R N E Y G E N E R A L